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The situation in East Timor during its transition to independence

Human rights questions: report of the United Nations High Commissioner for Human Rights

Situation of human rights in East Timor

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the United Nations High Commissioner for Human Rights on the situation of human rights in East Timor.

* A/56/150.

** In accordance with General Assembly resolution 55/222, part III, para. 10, this report is being submitted on 6 September 2001 so as to include as much updated information as possible.

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Interim report of the United Nations High Commissioner for Human Rights on the situation of human rights in East Timor

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I. Introduction

1. At the fifty-seventh session of the Commission on Human Rights, the Chairperson of the Commission issued a statement on the situation of human rights in East Timor, in which the United Nations High Commissioner for Human Rights was requested to submit an interim report to the General Assembly at its fifty-sixth session and to report to the Commission at its fifty-eighth session. The statement of the Chairperson was endorsed by the Economic and Social Council at its substantive session of 2001.

2. The High Commissioner submitted a report to the Commission at its fifty-seventh session (E/CN.4/2001/37), in which she noted, inter alia, that a project of technical cooperation between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Human Rights Unit of the United Nations Transitional Administration in East Timor (UNTAET)[1] was to be implemented during 2001.

3. The present report is submitted pursuant to the request contained in the Chairperson's statement and provides information on developments since the issuance of the statement.

II. Activities of the Office of the United Nations High Commissioner for Human Rights

A. Follow-up to the visit of the High Commissioner to East Timor

4. The High Commissioner visited East Timor in August 2000. In order to follow up on a number of concerns that arose during her visit, the High Commissioner appointed a personal consultant for East Timor, Shanthi Dairiam, Director of the Malaysia-based International Women's Rights Action Watch (Asia Pacific). The personal consultant visited East Timor from 29 October to 15 November 2000 and reported to the High Commissioner on, inter alia, appropriate action to be taken to encourage the voluntary return of refugees from West Timor to East Timor and modalities to assist in tracing persons missing since the violence of 1999. The High Commissioner has provided the present report to UNTAET and relevant United Nations agencies, funds and programmes with a view to assisting their work in East Timor. The High Commissioner has also provided the Government of Indonesia with the report. She has received positive feedback on the report from a number of United Nations agencies, funds and programmes.

B. Follow-up to the visit of the High Commissioner to Indonesia regarding matters pertaining to East Timor

5. During the High Commissioner's visit to Indonesia on 22 and 23 November 2000, the then Attorney-General, Marzuki Darusman, informed the High Commissioner that the Indonesian House of Representatives (DPR) had adopted the Law on Human Rights Tribunals on 6 November 2000. Pursuant to that legislation, an ad hoc tribunal was to be set up to hear cases of East Timor-related violations of human rights in 1999. The Attorney-General also informed the High Commissioner that dossiers had been prepared on 14 persons suspected of committing serious crimes in the 1999 violence and requested the High Commissioner to provide technical assistance to support the investigation and prosecution of the human rights violations that had taken place at that time. It was intended that OHCHR would commence its provision of technical assistance in mid-2001 which would include training for judges, prosecutors and defence counsellors and ad hoc judges and ad hoc prosecutors of the ad hoc human rights court. The purpose of that cooperation was to train a cadre of judicial and legal professionals who would be able to act as a catalyst of change within the administration of justice system. At the time of writing, however, OHCHR had yet to commence implementation of the proposed cooperation activities pending revision of Presidential Decree Number 53 of 23 April 2001, which had established an ad hoc court to try the East Timorese cases, so as to incorporate a reference to cases that had taken place prior to the popular consultation held in East Timor on 30 August 1999. As currently drafted, the Presidential Decree provides only for prosecution of alleged violations that took place after the popular consultation.

C. Technical cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Transitional Administration in East Timor

6. In April 2001, an agreement concerning a technical cooperation project to strengthen national infrastructure for the promotion and protection of human rights in East Timor was signed by the High Commissioner and the Special Representative of the Secretary-General for East Timor. That project, funded by the Government of Ireland, includes the following activities:

(a) Human rights training for East Timorese and international Professional staff of the Human Rights Unit of UNTAET and East Timorese non-governmental organizations;

(b) Human rights training for the East Timorese Police Service and the United Nations Civilian Police component;

(c) Human rights training for East Timorese judges, prosecutors and public defenders;

(d) Promotion of human rights activities, to include funding for the purchase, translation and dissemination of international human rights educational and training materials;

(e) Legal advice and assistance on particular issues, cases and draft legislation to ensure conformity with international human rights standards;

(f) Assistance with the establishment of a commission on reception, truth and reconciliation; and

(g) Assistance with promoting ratification of and compliance with the principal international human rights instruments.

7. In late May 2001, an OHCHR expert travelled to East Timor to provide human rights training on the methodology of monitoring, investigation and protection to East Timorese district human rights officer interns recruited by the Human Rights Unit. Topics included international human rights norms, identification of human rights violations, monitoring principles, methodological aspects of information-gathering and verification, interviewing, reporting and witness protection. The topics were illustrated through practical exercises and case studies and involved two days' fieldwork followed by a systematic review. The East Timorese district human rights officer interns participated actively in the training, showing a very keen interest in learning new skills or improving existing ones. The possibility of subsequent training once the participants had had sufficient opportunity to apply their skills and identify areas that required further improvement or development was considered desirable. OHCHR provided the Human Rights Unit with a set of training materials covering a wide range of subjects for further reference, training or follow-up use and these are to be translated into the Tetun language.

8. In early June 2001, OHCHR, the Human Rights Unit, the East Timorese Police Service and the Civilian Police organized two training courses on human rights in law enforcement, one for the East Timorese Police Service and the other for the Civilian Police. Three police training experts from India, the United Kingdom of Great Britain and Northern Ireland and OHCHR assisted at both workshops. Topics included non-discrimination, women and the administration of justice, civil policing in the democratic order, human rights and police investigations, human rights during arrest and detention, use of force and firearms and how to incorporate human rights into a police training curriculum. Thirty-two officers from the East Timorese Police Service participated in the first training course, which lasted five days. Though this was their first exposure to human rights training, there was a very positive response to the training. Forty-four Civilian Police officers from more than a dozen countries participated in a four-day training course that followed the course for the East Timorese Police Service. For many of the international participants, this was also their first exposure to comprehensive human rights training for police and the international standards adopted by the United Nations concerning criminal justice. The response to the course was extremely positive and discussions were held with the United Nations Police Commissioner and the Human Rights Unit regarding concrete follow-up action. The Human Rights Unit has undertaken to produce pocket-sized cards for all police in East Timor, outlining arrest rights, which will be printed in four languages.

9. Ongoing activities connected with the project include the purchase, translation into Tetun and Bahasa Indonesia and dissemination of international educational and training materials on human rights,

legal advice and assistance to ensure that draft legislation is in accordance with international human rights standards and technical assistance to the reception, truth and reconciliation process.

10. The two remaining activities, human rights training for East Timorese judges, prosecutors and public defenders and assistance in promoting ratification of and compliance with the principal international human rights instruments, are still to be scheduled for implementation during the course of 2001.

11. OHCHR continues to seek methods to improve its support to the Human Rights Unit, in luding dissemination of information on United Nations human rights machinery, comparative information on implementation of international human rights standards and the selection of candidates for posts within the Unit. On 3 July 2001, the Director of the Unit travelled to Geneva to discuss with OHCHR the ongoing and future key areas of work for a United Nations human rights presence in East Timor (see paras. 62-75).

III. The human rights situation in East Timor and related activities

12. The information upon which this section is based has been provided by UNTAET.

A. Status of investigations and prosecution of serious crimes committed in East Timor in 1999

13. It is estimated that the crimes arising from the 1999 violence in East Timor number in the thousands, with many alleged perpetrators remaining in refugee camps in West Timor. Some 400-500 files in connection with the 1999 violence currently remain open with the Serious Crimes Unit of the East Timorese Transitional Administration (ETTA).[2] Many of those files concern several alleged offences. UNTAET considers that countless serious crimes remain unreported or need to be evaluated to determine if a file should be opened.

14. A lack of resources, both human and material, in the Serious Crimes Unit has continued to prevent investigations from being undertaken in connection with the overwhelming majority of crimes against humanity committed in 1999. At the time of writing, 26 indictments had been issued against 46 accused persons, with 20 being charged with crimes against humanity (including murder, deportation and rape). Eight trials for murder, attempted murder or manslaughter had been concluded, with seven convictions and one acquittal. Sentences have ranged from 7 to 13 years' imprisonment.

15. The first trial for crimes against humanity, the Los Palos case, began on 3 July 2001. The indictment includes the forced deportation of the residents of the village of Leuro to West Timor on 8 September 1999, the murders of a group of clergy who had been distributing food and medicine on 25 September 1999 and a number of other individual murders.

16. The Human Rights Unit provides information on specific cases to both the Serious Crimes Unit and the Civilian Police to assist them in pursuing cases. However, that information concerns only individual cases and no record yet exists that can provide a general description of the events that took place in 1999, from the political climate before the popular consultation to an estimate of the number and types of crime that were committed. UNTAET and district human rights officers of the Human Rights Unit are therefore currently engaged in gathering such information, which the Unit will compile into a comprehensive record of events. It is intended that that record would be available for use by, inter alia, the Reception, Truth and Reconciliation Commission, the Serious Crimes Unit, the Civilian Police, the East Timorese Police Service and other researchers.

17. In Indonesia, on 23 April 2001, the President of the Republic of Indonesia signed a decree establishing an ad hoc tribunal to hear cases of human rights violations committed in East Timor. As noted in paragraph 5, however, the Decree establishing the court limited its temporal jurisdiction to those cases which occurred after the popular consultation on 30 August 1999. As a result, the court cannot hear cases of human rights violations that occurred prior to the vote. Those cases include the Liquisa Church killings of 6 April 1999, during which non-governmental organizations estimate that at least 57 people were killed, and the attack on the house of Manuel Carrascalao of 17 April 1999, in which at least 12 people are believed to have been killed. The Government of Indonesia has agreed to review the court's jurisdiction, but as yet this has not been done and the ad hoc tribunal has not been

established. Accordingly, this means that not one case that occurred during the 1999 violence, either before or after the vote, has been prosecuted. UNTAET has expressed its serious concern and disappointment at the restriction on jurisdiction.

18. UNTAET further reports that, in addition to failing to pursue vigorously its own prosecutions, the Government of Indonesia has not cooperated adequately with the prosecutions of the ETTA Serious Crimes Unit. On 9 April 2001, the Chief Prosecutor of the Unit forwarded four arrest warrants to the Attorney-General of Indonesia but as yet no response has been received.

B. Capacity-building

1. Access to justice

19. Prior to the popular consultation, the judiciary was staffed almost exclusively by Indonesian civil servants. Only one East Timorese had ever served as a judge, and that only since 1998; one East Timorese had worked as a prosecutor and only a few of the East Timorese who had obtained law degrees had been permitted to practise law. Those professionals, together with a small number of international staff, now serve as judges, prosecutors and public defenders within the East Timorese judicial system.

20. Four district courts (Dili, Baucau, Oecussi and Suai) and two serious crimes panels have been established to try the serious crimes[3] of 1999. However, only one serious crimes panel is actually functioning. This is due to the requirement that an East Timorese judge sit on each panel and as yet only one East Timorese judge has been assigned to do so. The lack of East Timorese judicial and legal officials[4] has produced a situation where the Dili District Court is the only fully functioning court.[5] This dire shortage of qualified judicial and legal personnel has extremely serious consequences. For example, UNTAET reports that at the end of January 2001 approximately 103 serious crime detainees were being held unlawfully because their detention orders had expired owing, inter alia, to lack of access to legal counsel. The Serious Crimes Unit has made significant efforts to address the issue, however, and at present, there are no serious crime detainees being held on expired detention orders. Concerns remain, however, over the functioning of the ordinary courts. In that respect, UNTAET has also reported that access to legal counsel is limited and suspects are often held for weeks or months before seeing a public defender. In fact, 74 detainees charged with "ordinary" crimes are currently being held on expired detention orders. Since 12 public defenders cannot service four courts in East Timor,[6] there are instances where, owing to sudden increased demands on the judicial system, persons taken into custody may be held for short periods of time after their detention warrants have expired before they are brought before the courts.

21. Concerns also remain as to the actual competence of those few personnel who are in service. Though the Department of Justice has put in place a framework for ongoing training for judges, prosecutors, public defenders and court registry staff and the International Development Institute is offering a week of training for every month of service in criminal, civil and procedural matters, some judges have complained that appropriate training has not always been provided. The international judicial mentoring system has also not been as effective as hoped. The situation is compounded by the difficulty for members of the judiciary to devote time to training, given their demanding professional schedules.

22. In other cases, and because, for instance, of the pressure to release detainees whose warrants have expired, judges have released suspects charged pursuant to allegations of serious crimes, sometimes unconditionally or on inappropriate conditions. In two instances, the releases came unexpectedly and the decision to release the suspect seemed, on the face of the evidence available, questionable. UNTAET had to act quickly and gathered the receiving community together to try and contain any possible violent reaction to the release of the alleged murderers.

23. While it is clear that the primary issue with respect to providing access to justice in East Timor is the lack of trained personnel and resources, there are other concerns, the origins of which stem from 25 years of Indonesian occupation and a discredited judiciary that did little to protect the rights of East Timorese. The population is understandably suspicious of both the police and the judiciary. As a result, East Timorese continue to resort to traditional dispute resolution mechanisms involving different approaches depending on the community and its leaders. In some cases, serious crimes are dealt with through that mechanism, often leaving the victim without either any

real access to justice or appropriate remedy or, worse still, resulting in other human rights abuses. The burden resulting from such practices falls disproportionately on the shoulders of the weakest members of society, in particular women (see para. 46).

24. In addition, it is reported that East Timorese judges and prosecutors are coming under increasing political pressure and that there have been cases of judges and prosecutors being subjected to threats and intimidation both in the courts and in their homes. For instance, the arrests that followed the violence between rival groups and opposing villages in the districts of Viqueque and Baucau in April 2001 resulted in serious intimidation and threats from villagers to the judges who heard the subsequent trials. In an attempt to assist in resolving the problem, therefore, an experienced international judge was recently deployed to Baucau on a permanent basis to help the less experienced East Timorese judges to deal with such threats and intimidation. UNTAET is working to ensure that security is provided to judges and prosecutors and that arrests are made in such cases, and the Civilian Police now maintain a permanent presence in the court during working hours

25. Some of the pressures on judges are not so blatant. UNTAET reports that members of the community who enjoy a certain standing, such as priests, teachers, former members of the Armed Forces for National Liberation of East Timor (FALINTIL) or of the National Council of East Timorese Resistance (CNRT) are, in some cases, not vigorously prosecuted for criminal acts and it is thought that this may be due to a fear of repercussions on the part of the judges. To add to the pressure, a district court judge earns the equivalent of $361 per month compared with a salary of $2,000 per month authorized for Cabinet members in June 2000 when ETTA was formed. The low salaries of East Timorese judges may leave them vulnerable to external pressure and work against security of tenure.

26. The Human Rights Unit works with the ETTA Department of Justice to meet the enormous challenges of creating and developing an independent functioning judiciary from the ground up. As a result of its role in monitoring the progress of the courts, the Human Rights Unit provides information on crucial issues that need to be addressed. In addition, the Unit has provided advice on the recruitment of public defenders and highlighted the need for a secure and safe environment in court. Over the coming months, the Unit will also be working to enhance East Timorese confidence in the judiciary, first, by providing information to communities on the functioning of the judiciary and their rights on arrest. It will then, in cooperation with OHCHR, provide human rights training to the judiciary, prosecutors and public defenders on issues shown to be relevant by the Unit's monitoring process.

2. The legislative framework

27. The Human Rights Unit is a member of the Legislation Committee of the East Timorese Cabinet (composed of East Timorese and international representatives), which advises the Cabinet on the drafting of legislation. The Human Rights Unit reviews proposed legislation to try and ensure that legislation adopted is in accordance with international human rights standards. In recent months, the Unit has made major contributions to a wide variety of proposed legislation, including regulations on the reception, truth and reconciliation commission, the constitutional commission, prison and police services, the defence force, legal aid, political party registration, firearms and weapons, traffic regulations, travel documents, four labour regulations, the ombudsman office, administrative evictions, public demonstrations and the judicial and prosecutorial codes of conduct.

3. Elections and the constitutional process

28. Elections for the Constituent Assembly have been scheduled for 30 August 2001. The Assembly has a recommended mandate of 90 days after the swearing in of its members to draft and adopt a constitution. The mandate of 90 days is not an absolute requirement, however, as the Assembly could decide to extend it.

29. A short-term consultation process has been established to ascertain the wishes of the East Timorese in relation to the constitution.[7] In each district, five to seven constitutional commissioners have been appointed to conduct the consultations. Each district panel of commissioners is to conduct at least one public hearing in each sub-district between mid-June and mid-July. A rapporteur and a constitutional adviser have been appointed to assist each district panel. All commissioners, rapporteurs and advisers are East Timorese. The commissioners are to prepare a report on the consultations to be given to the Transitional Administrator. Once the Constituent Assembly is established, the report of the consultations is to be

submitted to it for consideration. A number of UNTAET components are working to support the process.

30. Given the short period in which consultations are to take place and the limited information available to the community concerning both the subject matter of the consultation process and the process itself, the Human Rights Unit has been working with a coalition of non-governmental organizations to mount an information campaign concerning the nature of a constitution, relevant human rights issues and the rights of the East Timorese in the process. In June 2001, the Human Rights Unit assisted a coalition of non-governmental organizations, the NGO Working Group, to convene a one-day conference on the constitutional process, "Together Building a Constitution for East Timor". Experts from Fiji, South Africa and Thailand spoke of their experiences in seeking to ensure popular involvement in all aspects of constitution-making. East Timorese speakers from political parties, the church and the university were also invited to debate the current process in East Timor. Approximately 180 persons attended the conference. Also organized with the NGO Working Group was a one-day workshop on women and the constitution to discuss means of maximizing women's involvement in the constitution-making process and of ensuring that women's rights and interests are reflected in the Constitution itself.

31. The Human Rights Unit also supports the NGO Working Group more generally in its work of ensuring that education on the constitution is a long-term process, rather than something that will end with the election of the Constituent Assembly. Activities after the election will include discussions and advocacy with political parties and members of the Constituent Assembly on a number of issues, including the possibility of an interim constitution as a means to achieve a more comprehensive consultation process. Community education on constitutional issues will also continue. In that connection, the NGO Working Group is producing, with the help of the Human Rights Unit, a series of basic and accessible pamphlets in Tetun and Bahasa Indonesia on issues relating to constitutions, including the nature of a constitution and the human rights issues to be safeguarded in a constitution. The first pamphlet, which discusses the nature of a constitution, has already been completed in Tetun and Bahasa Indonesia and has been distributed widely throughout East Timor. The second pamphlet, on human rights and the constitution, is currently being finalized.

32. The Human Rights Unit has also been actively involved in the training of those conducting the consultations, including the training of the eight trainers who in turn will train the constitutional commissioners. The training not only covered the human rights aspects of the consultation process itself (emphasizing, inter alia, rights of participation, freedom of speech, equality rights and minority rights), but also provided an overview of the ways in which human rights issues might arise during the consultation process itself. More intensive input was provided for the training of the 13 constitutional advisers. Topics covered included identifying human rights concerns and dealing with human rights issues to be included in the constitution. The Human Rights Unit will be monitoring the operation of the constitutional commissions and liaising with them to provide further assistance throughout the whole consultative process.

33. The Human Rights Unit is also considering the situation of human rights in the context of the upcoming elections. In view of the short timescale and the concerns regarding potential political violence, the Unit has produced a leaflet on human rights and democracy to increase awareness about fundamental human rights, such as freedom of speech and assembly, the right to participate in public life and to hold elected office, and non-discrimination principles. The leaflet will be distributed by the district human rights officers and the non-governmental organizations in all districts and will be used in continuing human rights training organized by the Human Rights Unit. The Unit is also working on ensuring that human rights violations committed in the context of the elections are monitored and reported. Furthermore, the Unit is working with the Civilian Police and the Independent Electoral Commission to establish a system for effective and coordinated reporting during the run up to and on election day itself.

4. Civil society and non-governmental organizations

34. In addition to the specific issue-based activities noted above (see paras. 30-33), the Human Rights Unit continues to conduct a number of activities to support the strengthening of civil society, in particular human rights organizations. Following the holding in 2000 of

general human rights training in the districts with a wide range of participants, the Unit in 2001 developed a series of training courses for specific groups. In April 2001, the Unit focused on a national training of trainers course, to which the district human rights officers nominated candidates from their districts whom they believed would be able to use their skills to train others. The district human rights officers continue to follow up on the training by providing support to the "trained trainers" to conduct smaller training courses in their own districts.

35. As an integral part of its training programme, the Human Rights Unit has hired East Timorese district human rights officer interns for each of the districts (see para. 7). The interns work side by side with the international district human rights officers to build the capacity of East Timorese to become human rights advocates.

36. One major goal of UNTAET is to ensure that a human rights presence remains in each of the districts after the departure of UNTAET. Therefore, either a non-governmental organization or a loosely formed human rights organization has been established with the support of the district human rights officers in each of the Aileu, Ainaro, Bobonaro and Covalima districts. Support has included the allocation of funds, participation in informal training on human rights by district human rights officers and by the organization itself in the villages and subdistricts, the dissemination of human rights materials, the training of police and the development of an East Timorese human rights manual. UNTAET is working to ensure that those it trains and works with over the coming months will take the lead in protecting and promoting human rights in East Timor in the future.

37. With financial assistance provided by OHCHR, UNTAET is disseminating international human rights promotional and training materials in Tetun and Bahasa Indonesia throughout East Timor. The training team is finalizing negotiations with human rights non-governmental organizations in Indonesia to translate and publish a number of human rights materials, to include booklets containing various international instruments on, for example, the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (see resolution 2200 A (XXI), annex), the Convention on the Elimination of Discrimination against Women (resolution 34/180 (annex)) and the Declaration on the Elimination of Violence against Women (see resolution 48/104), the Convention on the Rights of the Child (resolution 44/25, annex), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 39/46, annex) and the International Convention on the Elimination of All Forms of Racial Discrimination (resolution 2106 A (XX), annex).

38. In addition to training East Timorese counterparts and disseminating promotional material, the Human Rights Unit is developing a means by which the information collated and analysed by it and that of East Timorese non-governmental organizations will be preserved in an accessible format for future use. In that regard, the Unit is in the process of determining the needs of East Timorese human rights non-governmental organizations, whether for training, hardware or databases, and is working with the non-governmental organization Fokupers on a database to track cases of violence against women. It is also anticipated that the Unit will play a significant role in the establishment of a database for the Reception, Truth and Reconciliation Commission.

C. The reception, truth and reconciliation process

39. On 20 June 2001, the East Timorese National Council unanimously adopted a regulation establishing the Reception, Truth and Reconciliation Commission in East Timor. Subject to funding, it is currently envisaged that the Commission will be operational by the end of 2001.

40. The Commission was first proposed by CNRT in June 2000 and was endorsed by the CNRT Congress. The Human Rights Unit assisted in the further development of the proposal by supporting a steering committee, which undertook the preparatory work leading up to the adoption of the regulation. The committee consisted of representatives of CNRT and key East Timorese human rights non-governmental organizations, namely, Fokupers, Yayasan HAK, ETWAVE, the Justice and Peace Commission of Dili Diocese and the Association of Ex-Political Prisoners. The Committee benefited from the assistance of UNHCR, the Political and Legal Units of UNTAET and the input of two international experts on truth and reconciliation commissions. It undertook a national

consultation, visiting all 13 districts, and consulted East Timorese judges, the Office of the General Prosecutor, public defenders, political parties and other stakeholders.

41. The Commission will have two broad functions. The first will be a truth-telling mechanism in which witnesses and victims of human rights abuses will give testimony, promoting healing, and contribute to the compilation of a national history and recommendations on legal and institutional reforms that will safeguard human rights in the future. There will be no provision for amnesty.

42. The second major function will be to promote community reconciliation by dealing with the many thousands of East Timorese who were involved in low-level crimes in 1999 and periods before by means of a community-based mechanism rather than the courts. Under those procedures perpetrators will approach the Commission which will form a panel to include local leaders from the community concerned. Victims, witnesses and the community will participate in a hearing and the panel will decide on an appropriate act of reconciliation, which may take the form of community service, repayment, public apology or other act, but must comply with international human rights norms and be proportional to the offence. The decision of the panel will be registered as a court order and once satisfactorily discharged will exempt the perpetrator from further civil or criminal liability. The courts will deal with serious crimes such as murder, rape or organizing large-scale violence.

43. The community mechanisms are intended to be cheaper and faster than the already overburdened fledgling justice system, will involve the community in the process and will assist reconciliation in a practical way. As the majority of the ex-militia in West Timor are low-level perpetrators, it is hoped that the Commission process will be an incentive for them to return to their communities safely.

D. The protection of ethnic and religious minorities and other vulnerable groups

44. The Human Rights Unit, through its office in Dili and its district human rights officers, continues to address the need for protection of particular vulnerable groups, the security of East Timorese refugees returning from West Timor and violence against women.

1. The protection of ethnic and religious minorities

45. The future of minorities in East Timor is uncertain. Currently, there are no regulations governing their status. The border regulation stipulates that a renewable three-month visa is required for persons who wish to reside in East Timor unless such individuals were born in East Timor before December 1975, were born outside East Timor but with one parent or grandparent born in East Timor before 1975 or are the spouse or the dependent child under 18 of a person who falls under the other two categories. This includes persons who resided in East Timor on a permanent basis before the popular consultation and includes, for example, the case of an ethnic Chinese businessman who moved to East Timor with his Chinese wife in 1982, bore and raised three children, purchased two properties and developed a private business in East Timor. A second matter of concern relates to the fate of Muslims, approximately 240 of whom remain in the Dili Mosque. The Muslims fled to West Timor with other refugees following the violence surrounding the popular consultation, but returned to the Dili Mosque soon after the violence. As there are no protection mechanisms for minorities, they fear for their safety if they try to return to their homes.

2. Human rights violations against women; women's rights as human rights

46. Though the legal position is that violence against women is a crime, non-governmental organizations have reported that the judicial system (including the Civilian Police and the Timorese Police) have not, in some cases, pursued matters involving violence against women vigorously. Furthermore, there is a perception that some elements of Timorese society wish to deal with such crimes more leniently by using traditional dispute resolution mechanisms. This contributes to a culture in which such offences are not considered as serious as they are treated in the applicable criminal law and fall short of international standards. The Civilian Police has, however, taken a number of initiatives to address the issue, including the setting up of the Vulnerable Persons Unit to deal with cases of violence against women and other vulnerable groups. To date, only the Dili District Vulnerable Persons Unit has adequate resources to deal with such cases. There are continuing problems, however, with non-governmental organizations' reports of gender bias in

court proceedings, which result in the unfair administration of justice for victims of violence against women.

47. Traditionally, women have not been encouraged to participate in public life in East Timor. "Public life" ranges from simply working outside the home to participating in government or political structures. The ETTA Gender Affairs Unit takes the lead on this issue, providing training to women entering public service and ensuring that women are represented in the newly created structures of East Timorese civil society and government. The Human Rights Unit works to support their initiatives, in particular, by mainstreaming women's and gender issues in its training on human rights and assisting non-governmental organizations in its strategic plans to address women's issues. For example, the Human Rights Unit has included non-discrimination and women's rights in its training and has also invited women's organizations to make presentations on their work. Nearly 50 per cent of the participants in the training have been women and the Human Rights Unit welcomed their active participation. The Unit also ensured that the steering committee that drafted the regulation for the establishment of a Reception, Truth and Reconciliation Commission included female members from leading women's non-governmental organizations and the Commission itself has been formed in such a way as to ensure that women survivors will testify. For instance, gender guidelines will be distributed for the commissioners to follow, some cases will be held in camera (cases involving women are particularly envisaged), 30 per cent of the national and regional commissioners will be women and ETWAVE is represented on the panel selecting the commissioners.

48. The Human Rights Unit has assisted Fokupers, a non-governmental organization focusing specifically on women's issues, to create a database to track violence against women and also the cases of women whose partners were killed, detained or tortured in 1999. The Unit is able to pass that information to the Serious Crimes Unit and facilitates the relationship between non-governmental organizations and that Unit. There are currently at least 114 known cases of rape that occurred during the violence surrounding the popular consultation in 1999, attributable mostly to militia groups. The Serious Crimes Unit estimates that, as investigations continue, that figure will increase significantly. At the beginning of February 2001, five suspects were indicted on charges of crimes against humanity, including rape. This was the first indictment for crimes against humanity in East Timor where rape was included as one of the crimes.

49. In order to ensure a continuum of support for women who suffered as a result of the violence in 1999, the Human Rights Unit also links survivors to non-governmental organizations for, among other things, trauma counselling, planning and finding resources for future support. The Unit has facilitated the establishment of or provided support to women survivors' self-help groups in Covalima, Maliana, Bobonaro and Liquisa districts. It also liaises with Indonesian non-governmental organizations, including organizations in West Timor, and with the Indonesian National Human Rights Commission, the Indonesian Commission on the Elimination of Violence against Women and the Indonesian Commission on Child Rights in connection with ongoing cases of violence against women in West Timor.

50. Further progress has been made with Ratelaek, a women survivors' group in Liquisa, which has completed a project supported by the Office for Transition Initiatives of the United States Agency for International Development and planned with the Human Rights Unit. The project includes the establishment of a cooperative, which runs a restaurant and a shop, an exchange visit to other survivors' groups in Maliana and Suai, financial management training and an exhibition on the contribution of East Timorese women to the independence struggle.

3. East Timorese refugees

51. According to UNHCR figures, as at 15 June 2001, 180,662 refugees had returned from West Timor to East Timor. Estimates of the number of refugees remaining in West Timor range from 90,000 to 130,000. Many refugees remain fearful to return because of misinformation in the refugee camps that leads them to believe that fighting is continuing in East Timor and it is not safe for them to return.

52. On 6 and 7 June 2001, the Government of Indonesia conducted registration of refugees in West Timor. Refugees were required to register and to indicate whether or not they wanted to stay in Indonesia or be repatriated to East Timor. Information about the process was conveyed by camp leaders and members of the Union of East Timorese Heroes

(UNITAS) (a political grouping composed of East Timorese parties in favour of the integration of East Timor with West Timor). Only heads of family were entitled to vote.

53. Preliminary results announced by the Government of Indonesia confirmed the registration of 113,794 refugees, with 111,540, or 98.02 per cent, electing to stay in Indonesia and only 1,250, or 1.1 per cent seeking to return. Many commentators have surmised that it is likely that a large number of refugees voted to stay in Indonesia due to fear of reprisal by militia and/or because they were not yet ready to return to East Timor, wanting instead to wait for the outcome of the 30 August elections, which would allow them to make an assessment of the chances of intimidation against returnees. This was confirmed by the 12 international observers of the process who concluded in their report that, although the procedures respected confidentiality and integrity:[8]

> "The overwhelming majority of refugees interviewed held high expectations of the assistance that was to be provided to those opting to stay in Indonesia. Opting for return was widely understood as meaning that they would have to do so almost immediately, thereby, as explained by the refugees, forfeiting the right to any severance package for government employees or preventing children in school from taking exams."

54. The Indonesian task force responsible for the repatriation of refugees who chose to return is reported to have told the United Nations military observers that the returns were to begin on 15 June 2001 and would continue until 15 August 2001. West Timor's provincial governor has reportedly stated that, of those who chose to remain in Indonesia, only 6,000 would be able to resettle permanently in West Timor. The remainder of the population would be required to resettle in other parts of Indonesia. The Government of Indonesia has not yet released official results of registration and therefore official repatriation has yet to start. The International Organization for Migration (IOM) is reportedly drawing up plans to repatriate refugees pursuant to the registration.

55. While UNTAET is working in coordination with UNHCR to determine how best to expedite and ensure the returnees' safe return, the Human Rights Unit specifically focuses on what happens to them after return. In some cases, returnees will not be welcomed back, in particular those who participated in serious crimes, while others may be seen as traitors or common criminals since they participated in low-level violence in the aftermath of the popular consultation. It is the return of the latter that requires preparation to ensure that they are not targeted but instead taken back into the community.

56. The district human rights officers prepare the communities for the returns, where they are able and usually in coordination with the other actors of the international community within the framework of a district returns committee. Often, the Human Rights Unit receives information at the last minute that a number of refugees are returning to a certain area and then works to determine who the returnees are and if there will be any concern surrounding their return. In cases where allegations already exist or surface regarding some of the returnees, the district human rights officer, together with other members of the international community, will call together community leaders to ensure that the returnees are not met with any hostility or harassment. Of course, if the returnee has been indicted or if there are allegations that he or she has committed serious crimes, then that returnee must be brought to justice. In other cases, however, and where allegations are unsubstantiated, the international community needs to ensure that allegations do not translate into violence. In situations where community leaders are unable to reach an agreement on a certain return, safe houses of varying capacity and quality are available in eight and are under construction in four of the districts. Under no circumstances, however, will the Human Rights Unit accommodate a request to reject the return of anyone wishing to return.

E. Political issues affecting human rights

1. Law and order

57. Before the popular consultation, CNRT played a central role in East Timorese life, coordinating the clandestine resistance movement and distributing information outside East Timor to support the independence movement. The Council provided support to victims of Indonesian violations and took significant risks in doing so. Immediately after the popular consultation, the CNRT stepped in to fill the vacuum in many essential services, including some law and order functions, often with the knowledge and cooperation of the Civilian Police, who were at that

time still building up full capacity. Since 1999, CNRT has assisted UNTAET in resolving many of the issues inherent in a post-conflict society and has been active in preparing East Timor for the transition to an independent State.

58. However, despite the mandate and increased capacity of the Civilian Police and the newly established East Timorese Police Service, members of various parallel structures — some part of the CNRT village, district and national structures, including the Seguranza Civil and persons claiming to be ex-members of the former military wing of CNRT, FALINTIL — continue to fulfil what they perceive to be a security role, which often extends to the enforcement of law and order. The justification claimed for this is often that the official structures are unable to maintain security effectively. The situation is, of course, extremely problematic, as none of those quasi-security groups are accountable for their actions and therefore act with impunity. UNTAET has received reports of human rights abuses by members of such groups, in particular in relation to returnees. Included in those reports are instances of unlawful arrests, "summonsing" returnees to appear before the security structures in order to question them about their activities in West Timor, assaults and, in at least one case, the murder of a returnee while in the custody of one of the groups. In other cases, individuals have used the guise of a security group to cover illegal activities, including extortion, threats and intimidation for political purposes.

59. With the dissolution of CNRT on 9 June 2001, the security groups linked to the organization were formally disbanded. There has already been a suggestion that the security groups should now report directly to the village chief. UNTAET is concerned that this may lead to potential abuses of power, in particular in the run-up to the election.

2. Human rights and political activity

60. Several political parties have adopted platforms advocating political tolerance and the protection of human rights. However, concerns linger that the 1975 political climate may be reintroduced and violence may occur during the election campaign. That concern has been supported in part by a series of skirmishes that have taken place during 2001 between followers of East Timorese political groups, which led to the detention of 13 people on 8 March 2001 in Baucau. Their detention subsequently resulted in an eruption of violence, including the burning of the Baucau Mosque.

61. Sporadic outbreaks of violence have not been the only concern regarding the conduct of political parties. At the end of 2000 and the beginning of 2001, party workers of the Frente Revolucionária do Timor Leste Independente (Revolutionary Front for an Independent East Timor, FRETILIN) "registered" all "supporters". UNTAET has received reports that some villagers felt obliged to register themselves and their families as sympathizers if not militants. FRETILIN have also been accused of warning individuals to vote for them or suffer the consequences, while both Democratic Republic of East Timor (RDTL) supporters and the Timorese Democratic Association have been accused of trying to prevent individuals from participating in the civil registration process, which is required in order to vote in the August elections. For its part, the Human Rights Unit seeks to address those issues mainly via its civic education programme, through which the Unit promotes the idea of breaking with the past and the need for political parties to be tolerant of each other.

IV. Ongoing and future key areas of work to promote and protect human rights in East Timor

62. The mandate of UNTAET as transitional government expires on 31 January 2002. The United Nations is therefore currently engaged in a process of assessing the extent to which the new independent East Timorese Government will require ongoing technical assistance. Experience reveals that a post-conflict situation is often accompanied by the creation of a fertile environment for future institutionalized violations of human rights. Signs of the potential problem are already apparent in East Timor and it is imperative that a strong human rights presence remain there to ensure that that fertile environment is not exploited. OHCHR and the Human Rights Unit have identified a number of areas as requiring immediate and medium-term United Nations technical assistance to support the new East Timorese Government's efforts to promote and protect human rights.

63. Progress in East Timor in investigating and prosecuting suspects for the serious crimes committed in East Timor in 1999 has been slower than hoped for. Further attention and resources must be devoted to

ensuring that the process of investigation and prosecution is speeded up, taking account, for instance, of the risk of deterioration of evidence.

64. The nascent East Timorese judicial system is only functioning in part. In order to build a judiciary from the ground up with only very limited human resources available and a largely destroyed infrastructure requires long-term commitment and considerable resources. Assistance will be required to support the training, continuing professional development and adherence to ethical standards by the judiciary, prosecutors, public defenders and other legal and judicial officials. Attention will also be required to focus on satisfactorily addressing the inadequate remuneration and other poor conditions of service and risks to personal safety. Independent monitoring mechanisms of the judicial and legal process will be required. Most important for a newly democratic State will be the need to educate the East Timorese public about the new system of justice in order to develop the confidence of the people that it will indeed deliver justice.

65. The new East Timorese Government will need to ensure that all legislation adopted is consistent with international human rights standards. Training will be required to ensure that those who interpret and implement the law do so in accordance with international standards.

66. The recent experience of many newly democratized countries has demonstrated the critical need for a constitution based firmly on democratic principles, containing a strong bill of rights in full conformity with international standards and establishing one or more institutions in support of democracy, such as a national commission on human rights. Experience has also shown that it is important for such a constitution to be adopted as soon as possible and to enter into force, at least provisionally, at the same time as the newly elected democratic Government accedes to power. This is because during the period before the accession to power of a new Government the greatest consensus exists among all political parties and civil society over the need for a strong bill of rights and effective democratic institutions to be enshrined in the new constitution. That period also coincides with the time when the public is generally most interested in national affairs and can be effectively mobilized to participate in the historic constitution-making process. It should be noted that such public consultation and participation is a key element in ensuring the ultimate accountability of a new Government to the people. Most importantly, the Timorese themselves have expressed interest in recent constitutional hearings for the protection of human rights to be enshrined in their first constitution.

67. Non-governmental organizations in East Timor played an active and vital role in the resistance movement and worked towards the common goal of independence. Of real concern to the non-governmental organizations now is the continuing evolution of their role, which in 2001 moved towards the more traditional role for a non-governmental organization of monitoring the human rights situation, providing analysis and advice to the Government and conducting human rights training. It is possible that, following the departure of UNTAET, there may be a tendency by the new East Timorese Government to exclude the participation of non-governmental organizations in its work.

68. Another concern affecting the future viability of non-governmental organizations is the flow of non-governmental organizations staff to ETTA. More may choose to stand for election on 30 August. Others have been given opportunities internationally. Thus, many of the more experienced members of the non-governmental organizations community will no longer be playing a leading role in that arena.

69. The newly established judiciary, the East Timor Police Service, the East Timor Defence Force and staff of the civil service all require ongoing training in human rights. The general public has also had no exposure to a culture of human rights. Without a solid foundation, the promotion and protection of human rights will not become an integral part of the East Timorese State.

70. Upon independence, East Timor will be in a position to ratify the key international human rights instruments. Technical assistance will be required both for the ratification process itself and for compliance with reporting obligations to the relevant treaty bodies.

71. The joint OHCHR/UNTAET training for the East Timorese Police Service was their first exposure to human rights training. Most participants had had less than two years' experience in the police. That overall lack of experience represents a major challenge for the East Timorese to assume, by 2002, full responsibility in the country for maintaining law and order. Among the areas needing attention are human rights and police investigations, arrest procedures, policing public

gatherings and the use of force and firearms. It will also be important to establish effective mechanisms for monitoring, investigating and preventing abuses within the police.

72. The Reception, Truth and Reconciliation Commission will have a mandate to investigate violations of human rights committed in the context of the political conflict from 25 April 1974 to 25 October 1999. The mandate will be for two years, with a possible extension of six months, and the Commission will be led by between five and seven national commissioners who will be appointed by a panel made up of representatives of civil society, the church and political parties who were active in 1974. Funding for the Commission must be raised outside the national budget and the Commission will require ongoing technical assistance.

73. Tolerance, acceptance of minorities and a rejection of a past ridden with violations of human rights are the only way forward to true reconciliation. This must be the basis on which to overcome the lack of protection mechanisms available for minorities. In addition, education regarding gender equality and women's rights will continue to be required in all spheres of life, in particular in the political domain, as will analysis of the use of traditional dispute resolution mechanisms in order to ensure that the state apparatus is complying with its international legal obligations. The challenge of protecting returnees, facilitating their integration and promoting reconciliation will remain vital to the continuing stability of independent East Timor.

74. Since October 1999, human rights monitoring by both UNTAET and non-governmental organizations human rights monitors has assisted in the process of identifying needs in the development of East Timor's new institutions. From its inception, the newly independent East Timor Government will face the huge task of establishing and consolidating the key institutions that will be required for the legislative, judiciary and executive branches of power to assume their respective responsibilities of establishing a functioning system of the rule of law based on principles of human rights. Independent human rights monitoring across the country will continue to be essential for the development of strong institutions that uphold law and order and also in ensuring a stable political environment.

75. Monitoring of the developing institutions in East Timor will provide the future independent Government and civil society with impartial, objective informative feedback on how well the newly created institutions are functioning, highlighting areas needing corrective action, improvement and reform. Such a programme would provide the Government with a solid and reliable factual basis for monitoring the functioning of those institutions, drawing attention to problem areas and designing corrective measures and appropriate responses.

76. The continuing presence of illegitimate security forces and the illegal activities of political parties need to be monitored and addressed. Continued independent monitoring of human rights will also be vital for, in particular, the safe return of those refugees in West Timor who wish to return, many of whom fear reprisal upon return, which has potentially serious consequences for the security and stability of independent East Timor. Independent monitoring across East Timor will go some way to ensuring that those refugees who choose to return will feel more secure in doing so.

V. Recommendations

77. In facing the challenge of strengthening new and vulnerable institutions, it will be essential to develop strong mechanisms for the protection of human rights, including rights based, inter alia, on provisions of the constitution, legislation, government structures and procedures. Taking into account the ongoing human rights situation in East Timor, with both the potential for escalation and the challenge of prevention, the High Commissioner recommends that a sturdy United Nations human rights component fully equipped to address the situation be maintained in the period following the UNTAET mission.

78. As in all steps to promote and protect human rights, consideration of the interests of women must be central. Adequate attention and resources are required to address the particular obstacles women face in the exercise of their rights. The implications for women of any legislation adopted or policy pursued must be assessed and addressed by the new Government of East Timor.

79. The High Commissioner reaffirms her call for justice for grave violations of human rights and

humanitarian law and that the perpetrators of the serious crimes of 1999 be speedily prosecuted under the law. At the present critical moment, just a few months before East Timor reaches long-awaited independence, the High Commissioner reiterates her call upon the East Timorese, UNTAET, the Indonesian leadership and other relevant actors in the international community to ensure that the necessary human and material resources are made available and that the political will is galvanized to ensure that justice is done. For, while appreciating the need in East Timor for reconciliation and the need to move forward, there is also a need to ensure that serious crimes do not go unpunished. Impunity for such crimes and a return to the legal fold for the perpetrators would undermine from the very beginning the capacity to build in a credible manner a culture embodying respect for the rule of the law, where the equality of all before the law is a cardinal principle.

80. In that regard, the High Commissioner recommends that UNTAET and ETTA, in cooperation with OHCHR, draw up plans to ensure the unhampered continuation of the tasks of the Serious Crimes Unit during the winding-down phase of UNTAET and following the end of the mission. The completion of its tasks must not be subjected to the expiration of the mandate of UNTAET and must continue until the most serious crimes have been prosecuted.

81. The High Commissioner notes that a serious lack of resources, both human and material, in the Serious Crimes Unit has continued to prevent investigations from being undertaken in connection with the overwhelming majority of crimes against humanity committed in 1999. The High Commissioner welcomes, however, the opening of the Los Palos trial and recognizes the importance of the holding of that trial, in accordance with international standards of justice, and its outcome will have for the people of East Timor.

82. Notwithstanding the statement of the Indonesian Foreign Minister to the Secretary-General that "the national judicial mechanism of the Republic of Indonesia is functioning and capable of dispensing justice"[9] and the encouragement of the Security Council to "institute a swift, comprehensive, effective and transparent legal process, in conformity with international standards of justice and due process of law",[10] the High Commissioner notes with concern that not one case arising from the 1999 violence has been concluded in Indonesia.

83. The High Commissioner welcomes the decision of the Government of Indonesia to revise the Presidential Decree establishing the ad hoc court for East Timor so as to include reference to cases that took place before the popular consultation and reiterates her call for the revision to take place with all speed. In that regard, the High Commissioner renews her offer to provide technical cooperation to the Government of Indonesia to support the administration of justice and recalls that her Office has drawn up a full programme in that connection, to be implemented when the existence of the appropriate conditions makes it possible.

84. The High Commissioner also recalls the recommendation of the International Commission of Inquiry on East Timor that:[11]

> "Future action with regard to the violations of human rights in East Timor should be governed by the following human rights principles: the individual's right to have an effective remedy for violations of human rights, which includes the State's responsibility to investigate violations, prosecute criminally and punish those responsible; the individual's right to reparation and compensation for violations of human rights from the State responsible for the violations; the need to act against impunity in order to discourage future violations of basic human rights".

The High Commissioner also recalls the recommendation of the International Commission that the United Nations establish an international human rights tribunal consisting of judges appointed by the United Nations to receive complaints and to try and sentence those accused of serious violations of fundamental human rights and international law that occurred in East Timor in 1999.[12]

85. The High Commissioner recognizes the enormous difficulties and challenges posed by the need to establish a judicial and legal system from the very beginning and appreciates the efforts of UNTAET and ETTA, in particular the Department of Judicial Affairs and the Human Rights Unit, in putting in place the building blocks for that process. Nonetheless, the High Commissioner notes that the judiciary is yet to become self-sustainable, resulting in serious shortcomings in

the law. The High Commissioner therefore recommends that UNTAET, ETTA and the new East Timorese Government ensure the provision of resources, training and support for the development of a judicial system premised upon respect for the rule of law. Taking into account the long-term nature of the sustainability of the judiciary, the High Commissioner calls upon donors to provide adequate funding for that process.

86. Given the complexity of the current legal framework in East Timor, the High Commissioner recommends that legislative reform and drafting, in accordance with international human rights standards, continue to be a high priority. The High Commissioner renews her offer to provide ongoing technical cooperation to assist in the drafting of legislation and in the interpretation and implementation of those standards.

87. The High Commissioner recognizes that the process of constitution-making is an important opportunity for the East Timorese to define the aims and scope of the structures of power. Accordingly, the High Commissioner encourages UNTAET, ETTA and the new East Timorese Government to ensure that the process leading towards the adoption of a constitution is a thoroughly consultative and participatory process. That process is already under way and should be continued as a matter of priority. The sense of priority, however, must be balanced by the requirement that the East Timorese be given adequate time and access to adequate information in order to participate fully in discussions on the new constitution. Furthermore, the timetable envisaged for the consultation process and election of the Constituent Assembly is short.

88. The High Commissioner encourages detailed discussion of the way in which the constitution might best protect the human rights of all East Timorese and reaffirms her call for the international human rights standards to which East Timor has already committed itself to be reflected in appropriate provisions of the constitution. Such a step would ensure that the foundation of the newest member of the United Nations is based upon respect for human rights and fundamental freedoms for all without distinction.

89. The High Commissioner calls upon UNTAET, ETTA and the new East Timorese Government to recognize fully the unique role and contribution of non-governmental organizations, both in the past and in the future and to ensure that they continue to play an integral part in the development of East Timor. They should also encourage and facilitate participation of the wider civil society in community affairs.

90. The High Commissioner welcomes the efforts of UNTAET and international and East Timorese non-governmental organizations to ensure that human rights education is as widespread as possible throughout East Timor. At the same time, the High Commissioner recognizes the fundamental need to further such education in all spheres of society in East Timor.

91. The High Commissioner strongly encourages the new East Timorese Government to ratify all key international human rights instruments at the earliest possible opportunity. The High Commissioner also advises that sufficient technical assistance should be made available to assist the new Government to implement its international legal obligations and comply with reporting obligations. To do so would assist East Timor in building a society based upon a culture of human rights, entrenched through the rule of law.

92. Following on from the human rights training provided by OHCHR and UNTAET to the East Timorese Police Service and the Civilian Police, the High Commissioner strongly endorses the calls by UNTAET that human rights training be integrated into the police training curriculum. In that regard, the High Commissioner welcomes the positive reception to those calls by the Director of the East Timor Police Training College.

93. The High Commissioner encourages consideration of formal mechanisms to promote and protect human rights in East Timor, including the possible establishment of an independent national human rights institution in accordance with standards adopted by the United Nations. In that regard, the High Commissioner welcomes the initiative of UNTAET to assist a working group of non-governmental organizations to consider the various mechanisms and institutions appropriate for East Timor. The High Commissioner reiterates the need for civil society to be involved in the development of any governmental initiative that addresses human rights concerns and for adequate training and resources to be provided for agencies whose work has a direct impact on the individual's enjoyment of those rights.

94. The High Commissioner congratulates those involved in the events leading to the adoption of the regulation on the establishment of the Reception, Truth and Reconciliation Commission. The High Commissioner recognizes the importance that mechanism can play, as a complement to the judicial process for serious crimes, and encourages donors to provide the required resources to the Commission.

95. The High Commissioner notes with concern the situation of ethnic and religious minorities in East Timor and calls upon UNTAET, ETTA and the new East Timorese Government to provide protection mechanisms in order to ensure that the East Timorese minorities live peacefully with their indigenous East Timorese neighbours.

96. The High Commissioner calls upon UNTAET, ETTA and the new East Timorese Government to find a solution based on international human rights standards for persons still living in the Dili Mosque. The High Commissioner also calls upon UNTAET, ETTA and the new East Timorese Government to introduce legislation protecting minorities and to amend any legislation that allows for illegal discriminatory behaviour.

97. The High Commissioner vigorously supports the work of UNTAET in its efforts to encourage the protection and promotion of women's rights. Moreover, though recognizing that in certain instances it may be appropriate to recommend that a problem be solved through traditional means, she affirms that violence against women should be seriously addressed in both criminal law and practice.

98. The High Commissioner recommends that UNTAET, ETTA and the new East Timorese Government ensure the preparation and facilitation of conditions for the safe return of internally displaced persons and refugees from West Timor.

99. The concerns raised by the behaviour of certain political groups, who have acted in a manner indicating a belief that they are not accountable to the authorities, including through the maintenance of security groups existing without legal authority in parallel to the legitimate police and defence forces, illegal detention and interrogation of returnees and other individuals and the use of threats and intimidation for political goals, require more attention from the legitimate authorities. The High Commissioner calls upon UNTAET, ETTA and the new East Timorese Government to pursue vigorously the establishment of a climate of accountability and respect for the rule of law.

100. The High Commissioner welcomes the important role that human rights must play in forming the bedrock of a democratic society and encourages UNTAET, ETTA and the new East Timorese Government to ensure that human rights values are at the centre of daily political activity.

Notes

[1] The mandate of UNTAET is set out in Security Council resolution 1272 (1999), which established UNTAET as the transitional administration in East Timor as follows: to provide security and maintain law and order throughout the territory of East Timor; to establish an effective administration; to assist in the development of civil and social services; to ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance; to support capacity-building for self-government; and to assist in the establishment of conditions for sustainable development.

[2] The responsibilities of ETTA follow from the UNTAET mandate and ETTA exists within UNTAET, with a separate budget. Part of the UNTAET mandate includes establishing an effective administration, supporting capacity-building for self-government as well as assisting in the establishment of conditions for sustainable development. To accomplish those objectives, the Transitional Administration (the Special Representative of the Secretary-General) initially created a component of the UNTAET mission known as the Governance and Public Administration, which was overseen by the Deputy Special Representative of the Secretary-General). The role of the Governance and Public Administration was to create an initial framework for the establishment of the future Government and to begin nation-building. International staff, in charge of both international and local staff, initially managed each of the departments of the Governance and Public Administration, such as Land and Property, Civil Service and Agriculture.

In July 2000, CNRT and UNTAET jointly agreed to restructure the mission and transformed the Governance and Public Administration into the East Timorese Transitional Administration (ETTA), in order to increase the direct participation and political responsibility of the East Timorese in furtherance of Security Council resolution 1272 (1999). All Cabinet officers are answerable to the Special Representative of the Secretary-General. Within ETTA, several East Timorese have been appointed heads of departments and all district administrators are East Timorese.

Nothing in this new governmental structure affects the overall responsibility for East Timor that the Security Council in its resolution 1272 (1999) has given to UNTAET; rather, it seeks to further the UNTAET mandate to build the capacity of the East Timorese for self-government and to create conditions for sustainable development.

[3] UNTAET Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences defines "serious crimes" as genocide, war crimes, crimes against humanity, murder, sexual offences and torture.

[4] For instance, only nine East Timorese public defenders and three international public defenders serve on both the serious crimes and ordinary crimes panels in each of the four district courts.

[5] In Suai, though there is a panel of three judges, one investigating judge and two prosecutors, there are no permanent public defenders. In Oecussi, there is one prosecutor and one investigating judge, but there is no judge or permanent public defender. Although there are no permanent public defenders in those courts, a system of mobile public defenders has been put in place until such time as it will be possible to have permanent public defenders in all courts.

[6] UNTAET reported that, at the time of writing, a further four public defenders were being recruited by the Department of Justice.

[7] UNTAET reported that, as at 6 July 2001, 24,408 people had participated in over 250 hearings held in the 13 districts.

[8] Findings of the International Observers on the Registration of East Timorese in Nusa Tenggara Timur, 13 June 2001. Brunei Darussalam, Japan, Korea, Malaysia, Mozambique, Norway, the Philippines, Portugal and Thailand, UNTAET and the International Organization for Migration sent observers.

[9] Letter dated 26 January 2000 from the Minister of Foreign Affairs of Indonesia to the Secretary-General (A/54/727-S/2000/65, annex).

[10] Letter dated 18 February 2000 from the President of the Security Council to the Secretary-General in connection with the report of the International Commission of Inquiry on East Timor (S/2000/137).

[11] Report of the International Commission of Inquiry on East Timor (A/54/726-S/2000/59, annex, para. 148).

[12] Ibid., para. 153.